REMARKS

Prior to entry of this Response, claims 1-9 remain pending and at issue in this application. With this Response, Applicant cancels claims 1-9 and adds new claims 10-18. The new claims address the Examiner's concerns regarding the alleged indefiniteness of the term "hot" and make clearer the scope of the claimed subject matter. Applicant submits that the claims are now in condition for allowance, and requests favorable action. The amendments add no new matter.

Amendments Proper for Entry

The accompanying amendments are proper under 37 C.F.R. §1.116 practice and should be entered because they do not present new issues requiring further search or consideration. Specifically, while Applicant submits a new set of claims, the new set of claims is virtually identical in scope to cancelled claims 1-9, reciting additional language to clarify said scope. Therefore, in accordance with MPEP 904.02, the examiner should have already searched and considered each of the elements now recited in claims 1-9. Finally, the amendments should be entered because they overcome the rejections set forth in the previous office action, and because they place the application in condition for allowance (or in better condition for appeal).

Claim Rejections Under 35 U.S.C. §112

Claims 1-9 stand rejected for using the term "hot," which the examiner asserts is a relative term that renders these claims indefinite. In view of the cancellation of the rejected claims, the previous rejections are moot. New claims 10-18 recite "withdrawing hot water for the multiple number of different drink units from a common hot water source, wherein supply water enters the hot water source through an inlet and the hot water is withdrawn from the hot water source through an outlet, and wherein ***the temperature of the hot water emanating from the outlet is greater than the temperature of the supply water entering the hot water source through the inlet***." While the phrases "hot water" and "hot water source" refer to

aspects of the disclosed embodiments associated with making coffee, espresso, tea, a shot of steam for forming foam, etc. (*see*, paragraph [0011], for example), such that a person having ordinary skill in the art would clearly understand that the term "hot" is used to encompass the entire range of temperatures at which any of these types of products may be brewed or prepared, the claims now makes clear that the "hot water" is water that is at a higher temperature than the source water entering the hot water source.

Claim Rejections Under 35 U.S.C. §103

Each of claims 1-9 stands rejected under 35 U.S.C. §103(a) as allegedly obvious over Knepler (US 5,375,508), "as evidenced by" Mercier (US 2002/0121197). In view of the cancellation of the rejected claims, the previous rejections are moot.

The newly added claims are patentable over the previously-cited documents (Knepler and Mercier), individually or in combination, because the documents do not disclose all of the elements recited in the new claims and, in particular, do not disclose ***defining a plurality of different drink units, each drink unit corresponding to a particular quantity of a particular type drink type***; determining a ***performance status*** of the hot water source; enabling hot water withdrawal for all of the plurality of different drink units at a predetermined full performance status of a hot water source; disabling hot water withdrawal for all of the plurality of different drink units at a predetermined zero performance status of the hot water source; and disabling hot water withdrawal for at least one predetermined drink unit of the plurality of different drink units and enabling hot water withdrawal for at least one predetermined drink unit of the plurality of different drink units at a predetermined partial performance status of the hot water source.

The claimed embodiments allow a drink preparation machine to operate in a manner that uses hot water efficiently. That is, the machine has defined a number of drink units (*e.g.*, a cup of tea, a pot of tea, a pot of coffee, a shot of steam, a small cappuccino, a large cappuccino, etc.), each drink unit corresponding to a quantity of

a type of drink. The machine measures a water level in the hot water source, and measure one or both of a pressure and a temperature in the hot water source. Then the machine determines a performance status of the hot water source. The performance status may be based strictly on the water level in the hot water source, the temperature of the water in the hot water source, the pressure in the hot water source, or some combination thereof. If, for example, the performance status is based on the pressure and water level in the hot water source, all drink units may be enabled to withdraw hot water when the water level and pressure are both above a desired value (*e.g.*, full performance status). But if the pressure in the hot water source drops below a certain predefined level, the performance status may indicate a partial performance status and the large cappuccino drink unit (which may require more steam than a small cappuccino) may be disabled from withdrawing hot water from the hot water source, while the small cappuccino and other drink units (*e.g.*, small cappuccino, shot of steam, cup of tea, pot of coffee, etc.) may be enabled to withdraw hot water from the hot water source. Alternately, if the water level in the hot water source drops below a certain predefined level, the performance status may indicate a partial performance status and the pot of coffee drink unit may be disabled from withdrawing hot water from the hot water source, while the cup of tea and cup of coffee drink units may be enabled to withdraw hot water from the hot water source. If the water level and/or the pressure within the hot water source drop below a certain level, the machine may determine a zero performance status of the hot water source and disable any withdrawal from the hot water source until the water level and/or the pressure return into a predetermined partial performance status or a full performance status.

The rejections of the previously-pending claims relied upon a combination of Knepler "as evidenced by" Mercier (*see* Office Action mailed November 17, 2009, at page 3). In the Examiner's "Response to Arguments" (*id.* at page 5), the Examiner indicates that Mericer is not a secondary reference, but provides "evidence with respect to the examiners [*sic*] position that different beverages require different temperatures with respect to the hot water temperature for proper brewing." Thus, the Examiner must be indicating that the previously-pending claims were obvious

over Knepler alone. However, this simply cannot be the case. Not only does Knepler fail to disclose defining a plurality of different drink units, each drink unit corresponding to a particular quantity of a particular drink type, fail to disclose receiving a selection of a drink unit, and fail to disclose enabling/disabling hot water withdrawal on the basis of the selected drink unit, as recited by the claims, but Knepler actually ***teaches away*** from these concepts, as described below.

Knepler is directed to a control system which is separate from the brewing apparatus but selectively connectible to the apparatus for making adjustments to the functions thereof. (*See, e.g.*, Knepler at col. 2, lines 40-45.) The use of a selectively connectible control system prevents tampering with or accidentally adjusting the programmable adjustments. Knepler teaches that the drink type and the volume of the drink may be selected, but this is not the same as defining a plurality of drink units, each drink unit corresponding to a particular quantity of a particular type of drink. Moreover, while Knepler discloses that controls on the device may allow a user of the device to select the type and volume of the beverage to be brewed (*id.* at col. 9, lines 37-61), Knepler appears to teach that ***changes other than to the type or volume of liquid dispensed*** (*e.g.*, changing a brew temperature, ***disabling a type or volume***, etc.) cannot be made without connecting the separate control unit to the brewing apparatus.

Further, in rejecting the previously-pending claims, the Examiner states that "it would have been obvious...to teach a specific programming logic since different beverages require different temperatures with respect to the hot water temperature for proper brewing." (*See* Office Action at page 6.) While it may be true that different beverages require different temperatures for proper brewing, there is nothing in Knepler that would suggest to one of ordinary skill in the art that it would be desirable to modify Knepler to brew different beverages at different temperatures (*i.e.*, a performance status based on temperature), much less that a performance status based on pressure or water level, or some combination of two or more of pressure, temperature, or water level, as recited by the claims. The only temperature settings disclosed in Knepler are (1) a control function (5) for setting the temperature at which the "Ready Lamp" turns off, and (2) control functions (2, 18,

19) for setting the brewing temperature for the apparatus (not for individual types of drinks). (*See* Knepler at col. 6, lines 47-48 and 53-55, and col. 7, lines 18-24.) Thus, Knepler ***expressly teaches*** that the brewing temperature is a variable that ***should not be available for modification by the user*** of the apparatus (*i.e.*, only available to the person having access to the control unit), and ***does not vary according to the drink type.***

Further still, the function (40) disclosed in Knepler for "brew lockout when Ready Lamp off" is not a function that can vary by drink type or volume but, instead, operates strictly according to the temperature programmed at control function (5) (*i.e.*, ***nothing may be brewed*** when the ready light is off, ***everything may be brewed*** when the ready light is on). Thus, Knepler also teaches that selection of drink type and drink volume ***do not affect whether a beverage is brewed***, as that is determined strictly by a setting available only with the control unit, and corresponds only to whether the "Ready Lamp" is on or off, which is itself determined by a setting unrelated to the drink type or volume selected.

As described above, Knepler does not disclose or suggest all of the elements recited by the claims, and teaches away from modification of the disclosed device. Therefore, the pending claims cannot be obvious over Knepler. For at least these reasons, the pending claims are patentable over Knepler. Therefore, Applicant submits that the pending claims are in condition for allowance.

CONCLUSION

Accordingly, all remaining claims are in condition for allowance for the reasons provided above. Although Applicant believes that no additional fees or petitions are due, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 13-2855 of Marshall, Gerstein & Borun LLP under Order No. 30051/39757. Should the Examiner wish to discuss any of the foregoing comments or any claim amendments deemed needed to result in allowance, Applicant kindly requests the Examiner to contact the undersigned by telephone at the number given below.

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Respectfully submitted,

By _____

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